

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of: **PEMBERTON ET AL.**

Serial No.: **10/734,461**

Filed: **12/12/2003**

For: **“Method and Device for Preventing Pets from Clawing Home Furnishings”**

Examiner: **Mark A. Osele**

Art Unit: **1734**

MAIL STOP AMENDMENT
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

DECLARATION OF BONNIE PEMBERTON

1. My name is Bonnie Pemberton. I am the inventor of the invention disclosed in the above-noted application. I am over 21 years of age, of sound mind and willing and able to make the following Declaration.
2. I am a college graduate, having graduated from Texas Wesleyan University with a degree in business. While I have sold pet products for many years, I am not an expert in the field of plastics, adhesives or adhesive tapes. Moreover, I am not an expert in the field of packaging. I consider myself one of ordinary skill in the art when it comes to the subject matter of the invention disclosed in the application.
3. I have used the invention described in the application as the basis for my business, Fe-Lines, Inc. Fe-Lines, Inc. is a Texas corporation in good standing and has been in business since about 1981.
4. Fe-Lines, Inc. is in the business of selling pet products to distributors and the public. The pet products include many items, but specifically include the invention of the application. The company sells several embodiments of the invention including a “flat” version and a “corrugated” version. The “flat” version incorporates the elements of claim 1 of the patent application among others. The “corrugated” version incorporates the elements of claim 42 of the patent application among others. A copy of a picture of the “flat” version is attached to this Declaration as Exhibit A. A copy of a picture of the “corrugated” version of the invention is

attached as Exhibit B.

5. The invention has been a huge commercial success.

6. For example, Fe-Lines, Inc. began selling the claimed invention in 1996. At the outset, our sales figures began to climb rapidly from \$26,000 in 1996, to \$1 Million in 2005. This equates to a jump in sales of about 3,250 units per year to just over 203,000 per year. Since its inception, the company has sold over 1,500,000 packages of products incorporating the claimed invention.

7. I estimate the size of the market for those particular products to be about \$1,500,000.00 per year. Our percentage of that market or market share I estimate to be approximately 70-80%.

8. Over the years, our market share has grown. With the appearance of similar products, our market share has grown from 0% to almost 80% in less than 10 years.

9. The only prior art that is directly related to my invention that I am aware of is double sided tape offered by 3-M Company. The tape has a different construction. The tape includes a long coiled strip with a “non-sticky” layer on one side. It is very difficult to apply because it comes off the roll with a sticky side and is difficult to handle. It doubles back on itself and the adhesive side tends to come in contact with itself, snarling the application of the product. The advantages of the invention among others prevent this problem by providing bisected release layers which allow the product to be positioned with two non-sticky surfaces before the base layer and release layer are removed. The “two-part” release layer is also helpful in applying the product and is a huge advantage over the prior art.

10. In regards to the “flat embodiment”, I have received praise from customers regarding the claimed features of the invention. Specifically, customers have expressed the advantage the combination of the transfer sheet, the strip and “two-part”/bisected release layers has in the ease of application of the invention to furniture and the like. Customers have also expressed adoration regarding the gap between the strips has in aiding in the removal of the strips from the transfer sheet. Additionally customers have disclosed their satisfaction regarding the adhesive’s tack strength to easily cause an unpleasant sticking sensation. In my opinion, and based on comments that I received from customers, this claimed feature of the invention and others are the reason for its success.

11. In regards to the “corrugated embodiment” I have received acclaim from consumers regarding some of its features which include a strip (control sheet) with one surface being releasable adhered to a corrugated substrate and the other surface being adhered to a release layer. In my opinion, and based on comments that I received from customers, this claimed feature of the invention and others are the reason for its success. In my opinion, and based on comments that I received from customers, this claimed feature of the invention and others are the reason for its success.

12. Before my company launched a product embodying the elements of the claimed invention, it was relatively inexperienced in the market, and, because of the features of the invention has achieved a large market share.

13. The products sold by Fe-Lines, which incorporate the claimed invention have been the subject of industry recognition and awards. At various trade shows, including the Editors Choice Award from Cat Fancy Magazine in 1997 and 2003 (Exhibit H), the "Excellent" review from CATsumer Report in 1999, a formal "endorsement" from CATNIP! Newsletter in 1999 (Exhibit I), as well as a two-year "Seal of Approval" from the ASPCA in 2000 (Exhibit J). These awards specifically refer to the "Sticky Paws for Plants" and the "Sticky Paws for Furniture". The "Sticky Paws for Plants" is the "corrugated embodiment" of the invention covered by claim 42. The "Sticky Paws for Furniture" is the "flat embodiment" of the invention covered by claim 1.

14. I believe that the relatively quick rise in market share and sales is because of the elements of the claimed invention. For example, the company only spends a small fraction of its income on advertising.

15. Moreover, as the Patent Office can see, by looking at the product, we do not spend an inordinate amount of money on product presentation or packaging. I believe that the reason that customers buy the product is because of the advantages that the invention provides.

16. The Patent Office can see that both Exhibit A and Exhibit B (which are my company's products) are covered by and include the elements of claims 1 and 42, respectively.

17. There is also evidence of exact copying of the invention.

18. Attached to this Declaration is a copy of a photograph of a first competitor's product, which virtually identically copies one of the embodiments of the invention. *See, Exhibit D.* The dimensions of the product are similar. The substrate, the control layer and the bisected release layer are identical. The adhesive in the first competitor's product has been tested and determined to be nontoxic as claimed in my application for my invention. A copy of the test results showing the similarity in adhesive is shown in Exhibit K. This competitor is a larger better-established company than mine and has a large distribution network in place. Although I am unaware of the exact date that this competitor's product went into public use, I became aware of it well after I invented and began selling the devices as shown in Exhibits A & B and claimed in Patent Application Number 10/734,461.

19. There is additional evidence of copying because the label and instructions supplied with the competitive product are almost identical. For example, a copy of the instructions supplied to the customer by my company with the inner package of the product is attached as Exhibit C. Exhibit E is a photocopy of the first competitor's instructions.

20. Attached to this Declaration is an internet web page printout showing a second competitor's product, which also virtually copies the flat embodiment of my invention. In this instance the dimensions of the product are similar and the substrate, control sheet and bisected release layers are identical to my invention. *See, Exhibit F.*

21. The second competitor closely copied the instructions of the Fe-Lines product. A copy of the instructions from this competitor's product is attached as Exhibit G. The second competitor also used packaging very similar to that used for the Fe-Lines product. *See, Exhibits F, G.*

22. The products incorporating the claimed invention have been recommended in award-

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winning books, including:

- Complete Kitten Care, by Amy D. Shojai, a nationally known authority on pet care and behavior, a spokesperson for Purina®, and an award-winning author of more than a dozen nonfiction pet books.
- Kittens for Dummies, by Dusty Rainbolt, a nationally known authority on cat care and behavior, and an award-winning author and a regular contributor to the Whole Cat Journal and City + Country Pets.
- The Cat Fanciers' Association Complete Cat Book, by Mordecai Siegel, a nationally known, highly-regarded and widely published authority on pet care.
- Think Like A Cat, by Pam Johnson-Bennett, a Certified Animal Behavior Consultant and clinical member of the International Association of Animal Behavior Consultants. She is the author of a number of award-winning and critically acclaimed books and one of the country's most well-known and popular experts on cat behavior.

23. A copy of the entire packaging and display of the infringing device attached as Exhibit D is attached as Exhibit L.

I declare under penalty of perjury that the foregoing is true and correct.

Date: 9/6/06

Bonnie Pemberton
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